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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,898	02/04/2004	Dennis Piper	AFF013USPT02	3891
23403	7590	11/10/2005	EXAMINER	
SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			LINDSEY, RODNEY M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/771,898

Applicant(s)

PIPER ET AL.

Examiner

Rodney M. Lindsey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: basis should be provided for terminology such as “pivoting”, “pivot axis”, “right half” and “left half” (see claims 23-27).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations of “pivoting” and of a “pivot axis” and of a “right half” and “left half” relative to the “pivot axis” are not supported by the original specification and are therefore considered new matter.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-4, 6, 8-10, 22-24, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Nomiyama. With respect to claims 1, 2 and 23 note Figures 10 and 11 and inner layer 12, outer layer 22 and the single point as defined by 24, 25, 26 of the crown of the headguard. Further with respect to claim 2 note the intermediate layer of a liquid or powdered lubricant (see column 5, line 21). Further with respect to claim 23 and with respect to claim 24 note the pivot axis defined by 24, 25, 26. With respect to claims 8-10 and 27 note the means 60 holding the layers relative one another (see column 4, lines 52, 53) or biased to a standard position as claimed. With respect to claim 22 note the rough interfacing surfaces as at 65, 66 as claimed. With respect to claims 3 and 6 note the use of a liquid intermediate layer per column 5, line 21 equivalent to a flowable material as claimed. With respect to claim 4 note the use of a powdered lubricant intermediate layer per column 5, line 21 equivalent to solid particulates as claimed. With respect to claim 26 the headguard defines right and left halves and relative to the pivot axis as claimed.

6. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Lovell. Note Figures 1 and 2 and outer and inner layers 11, 12, diametrically opposed attachment points as at 14 effectively defining a pivot axis for frictional sliding of the outer layer 11 over the inner layer 12.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 5, 11, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomiyama in view of Nakayama et al. Nomiyama does not teach either the use of a gel or the use of elastic material between the inner and outer layers. Nakayama et al. teach the use of an elastic gel 15 between inner and outer shell layers. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the elastic gel of Nakayama et al. for the liquid or powdered lubricant of Nomiyama to achieve a like result of permitting relative rotation between shell layers for absorbing tangential components of shocks.

9. Claims 7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomiyama in view of World patent to Von Holst et al. Nomiyama does not teach either the use of a gas or the use of elastic material between the inner and outer layers. Von Holst et al. teach the use of either air or rubber between inner and outer shell layers (see page 4, line 34). It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the air or rubber of Von Holst et al. for the liquid or powdered lubricant of Nomiyama to achieve a like result of permitting relative rotation between shell layers for absorbing tangential components of shocks.

Response to Arguments

10. Applicant's arguments filed October 14, 2005 have been fully considered but they are not persuasive. Contrary to applicant's remarks the elongated slots of Lovell clearly permit pivoting of the outer shell relative to the inner shell. Further, in regards to the claims as now presented, such claims are not seen to distinguish from the art of record namely Nomiyama as note by the rejections set forth above. The rejection of claims 1-13 and 22-27 ably set forth above is deemed proper in all respects.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the relative movement of the shell layers of the helmet of World patent to Phillips.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

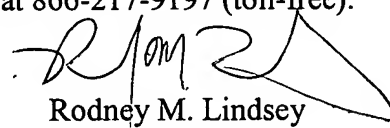
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey
Primary Examiner
Art Unit 3765

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